COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE
205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

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CERTIFIED MAIL

Richard A. Nylen, Esq.
Lynch DeSimone & Nylen, LLP
12 Post Office Square
Boston, Massachusetts 02109

July 4, 2007

Re: NEWBURYPORT - Solid Wastes/COR
Crow Lane Landfill
Superior Court Civil Action No. 06-0790 C
Preliminary Injunction
Paragraph 9 – Notice of Noncompliance
FMF No. 39545

Dear Attorney Nylen:

The Massachusetts Department of Environmental Protection, Bureau of Waste Prevention, Solid Waste Section (the "MassDEP") has determined as described herein that your client, New Ventures Associates, LLC ("New Ventures"), is not in compliance with the preliminary injunction entered on October 20, 2006 in Suffolk Superior Court, Civil Action No. 06-0790 C, as amended by order of the Court on November 1, 2006 and February 22, 2007 (the "Order") with regards to activities occurring at the Crow Lane Landfill (the "Landfill") in Newburyport, Massachusetts.

From June 14, 2007 through July 3, 2007, the MassDEP, the City of Newburyport and/or New Ventures received sixty-four (64) odor complaints from residents of the neighborhoods in the vicinity of the Landfill. Complaints were received on all but four (4) days during that time period.

Of the sixty-four (64) odor complaints received, twenty-three (23) reported physical symptoms associated with exposure to hydrogen sulfide gas ("H_2S") such as throat and eye irritation, headaches, and, for at least three (3) individuals, nausea. The presence of H_2S in the neighborhood during this period was confirmed by ambient air monitoring conducted by the MassDEP and/or New Ventures. On the four (4) days that odor complaints were not received, the wind was either blowing away from residential neighborhoods, or there was a strong, steady breeze blowing, more quickly dispersing H2S and thus lessening the likelihood of nuisance odors settling into the neighborhoods around the Landfill. On all but one of the four nights with out recorded complaints, MassDEP representatives monitoring the ambient air in the area of the Landfill detected H_2S with a Jerome Meter and/or smelled odors associated with the presence of H_2S that, absent the windy meteorological conditions, would likely have resulted in odor complaints from residents and the occurrence of nuisance odors.

New Ventures repeated violation of the Order as described below contributes directly to the continued release of landfill gas and the occurrence of H_2S in the neighborhoods around the Landfill, and the continuing occurrence of nuisance odors, threatening the public health, safety, and welfare of the residents of those neighborhoods.

1. Paragraph 2 of the Order requires that Construction and Demolition (C&D) Material must be thoroughly mixed with soil at a ratio of 1:1 during placement at the Landfill. During inspections of the Landfill on June 20, 22, 26, and 28, 2007, MassDEP's representative observed New Ventures placing C&D Material without mixing it at the required 1:1 ratio with soil, in violation of the requirements of paragraph 2 of the Order.

2. Paragraph 1(p) of the Order requires New Ventures to submit for MassDEP's approval a geotechnical evaluation of the landfill's perimeter berm and, within 7 days of receipt from the MassDEP of notice of any deficiencies in the evaluation, submit for MassDEP's approval a response that addresses the deficiencies and any other concerns raised by MassDEP. By letter dated March 7, 2007, attached hereto as Exhibit 2, MassDEP notified New Ventures of deficiencies in the geotechnical evaluation it had submitted. On June 4, 2007, the MassDEP received a report from New Ventures consultant SITEC Environmental, Inc. (SITEC) of Marshfield, Massachusetts that contained revised design plans for the perimeter berm and a supplemental Geotechnical Evaluation.

   The report does not provide sufficient information on the as-constructed condition of the existing earthen berm for the MassDEP to determine the appropriateness of the proposed Factors of Safety and the revised design. This includes, without limitation, the following:

   a. Data or other suitable documentation demonstrating that the soil properties for the berm foundation are suitable.
   b. Data or other suitable documentation demonstrating that the existing berm was constructed with material of a minimum strength used in the design stability analysis and supporting the internal friction angle of 40 degrees used in the geotechnical analysis.

c. Data or other suitable documentation demonstrating that the existing berm was constructed as a controlled fill with proper compaction.

As discussed with you, your client New Ventures, and SITEC on June 13, 2007, and as described in the June 15, 2007 email to you from the Office of the Attorney General, it is necessary that a geotechnical boring program be conducted to collect the data and information on the as-built condition of the existing earthen berm to validate the assumptions used in the geotechnical evaluation, and for the MassDEP to complete its review of the revised berm design, the geotechnical evaluation, and the proposed Factors of the Safety. On July 2, 2007, you informed the Office of the Attorney General that New Ventures would not conduct any soil borings or provide the MassDEP with any further information or documentation addressing the MassDEP's continuing concerns. Thus, New Ventures' has failed to address the issues and concerns raised in the MassDEP's March 7, 2007 deficiency notice and thus remains in noncompliance with the requirements of paragraph 1 (p) of the Order.

3. Paragraph 1(d) of the Order requires New Ventures to install and operate in conjunction with the automated enclosed flare a permanent LFG pre-treatment system consisting of three (3) pre-treatment vessels twenty four (24) hours a day, seven (7) days a week, in accordance with the performance standards in Appendix A of the Order and with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide, and other LFG emissions to meet the requirements of M.G.L. c. 111, § 150A, and the implementing regulations at 310 CMR 19.000 *et seq*., and M.G.L. c. 111, § 142 A-B, and the implementing regulations at 310 CMR 7.00 *et seq*.. Appendix A Section G requires that the LFG System shall be adjusted and other measures taken as necessary to control and mitigate the release of landfill gas from the site and optimize the operation of the LFG System.

   New Ventures currently utilizes three (3) forty (40) yard containers charged with Sulfur-Treat as pre-treatment vessels at the site. New Ventures modified the containers for use as permanent pre-treatment vessels by, among other things, installing fittings for connection of the vessels to the landfill gas system; installing access hatch(s) for charging and removing treatment media from the vessels; and sealing the vessels to render them airtight and prevent the infiltration of ambient air into the pre-treatment vessels and the landfill gas flare. The three containers/vessels are connected in series prior to the enclosed flare.

   During inspections of the Landfill, MassDEP representatives routinely collect data on the quality/composition of the landfill gas entering the pre-treatment system (influent), between the pre-treatment vessels (mid-point), and after the pre-treatment system at the inlet to the enclosed flare (effluent). This data includes measurement of the concentrations of methane (CH_4), oxygen (O_2), and hydrogen sulfide (H_2S). The data consistently shows decreases in the concentration of CH_4 and CO_2 and increases in the concentration of O_2 from the influent, mid-point, and effluent samples indicative of the intrusion of ambient air into the pre-treatment system demonstrating that the containers are not airtight. New Ventures has

implemented measures to reduce the infiltration of ambient air into the pretreatment system in response to the MassDEP's April 12, 2007, Notice of Deficiency.

However, the data collected by MassDEP's representatives during recent inspections of the Landfill, continues to document that the intrusion of ambient air is still occurring into the pretreatment system. On July 2, 2007, during an inspection of the Landfill, data collected by MassDEP's representative indicated that intrusion of ambient air into the pretreatment system is diluting the effluent gas from the system by approximately 16%. The intrusion of ambient air into the pretreatment reduces the vacuum that can be maintained on the landfill gas extraction wells and thus impacts the overall effectiveness of the landfill gas extraction wells in capturing and controlling the emission of landfill gas, particularly within the northwest, west, and southwest areas of the Landfill. During recent inspections of the Landfill, representatives of MassDEP have consistently observed and monitored the release of H_2S from the southwest, west, and northwest areas of the landfill – evidence that the LFG System is not adequately controlling the emission of landfill gas in these areas. In addition, as described in paragraph 6 below, New Ventures has not activated the Geocomposite Gas vent system in the western portion (Phase II Area) of the Landfill, further reducing the ability of the LFG System to control the release of landfill gas from that area of the Landfill. Finally, because there is still substantial ambient air intrusion into the pretreatment vessels, the vessels are not airtight and thus do not constitute a permanent system. For all of the reasons stated in this paragraph, New Ventures is not operating the LFG pre-treatment system in accordance with the performance standards required by Appendix A, in violation of the Order.

4. Paragraphs 1 (b) and 1 (d) of the Order require, among other things, that New Ventures operate the enclosed flare and landfill gas (LFG) pre-treatment system at the Crow Lane Landfill (the "Site") in accordance with the performance standards in the LFG protocol attached to the Order as "Appendix A," twenty four (24) hours a day, seven (7) days a week, with demonstrated effectiveness at controlling hydrogen sulfide (H2S), sulfur dioxide (SO2), and other LFG emissions to meet the requirements of G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq*., and G.L. c. 111, § 142 A-B, and the implementing regulations at 310 C.M.R. 7.00 *et seq*.. In order to assure compliance with the Order's operational protocols and performance standards for the enclosed flare and LFG pretreatment system, Appendix A Section C of the Order establishes inspection and reporting requirements for the Engineer of Record for the project, SITEC, including, without limitation that the Engineer conduct weekly inspections of the Landfill and provide a Weekly Status Report to the MassDEP within two (2) working days of the inspection by either email or facsimile. The required reports have not been provided to the MassDEP since on or about April 22, 2007.

5. Paragraph 1(r) of the Order requires New Ventures to complete installation of the FML and the Geocomposite gas collection system for the entire Phase I and Phase II Areas designated on Exhibit 2 of the Order by January 3, 2007 in accordance with the Phase I and II Gas Vent Design Plan. This includes the installation, connection, and operation of the Geocomposite gas vent layer and the associated landfill gas header components. During our June 13, 2007 meeting Mr. Thibeault, New Ventures' President, confirmed that the FML and Geocomposite were not anchored along the northwest and west portions of the perimeter berm in accordance with the design plans. Rather than excavating and anchoring them in an anchor trench in accordance with the design plans New Ventures placed them on the top of the existing berm. New Ventures then subsequently placed asphalt grindings and or soil, crushed stone, and additional asphalt grindings on the FML and Geocomposite in these areas.

   As a result, New Ventures has created a pathway through which and upon which both landfill gas and storm water migrate across areas of the berm, resulting in the emission of landfill gas and erosion of the side slope of the berm. In addition, tears in the FML exist including, without limitation on the northeast corner and north side of the Phase I Area. In addition, the orifice plates shown in Detail 2 of Sheet 2 of Exhibit 2 to the Order have not been installed. Because of the above, the Geocomposite Gas vent system is not operational and the FML and Geocomposite have not been installed in accordance with the design plans. Therefore, New Ventures is not in compliance with paragraph 1(r).

6. Paragraph 1(u) of the Order requires New Ventures to immediately institute measures to control and manage leachate contaminated standing surface water in the temporary and partially constructed on-Site basins and the wetlands. Over the past few months, MassDEP representatives have repeatedly observed the release of leachate from the landfill including the presence of black and odiferous leachate in the wetland located to the east of the landfill. During an inspection of the Landfill on June 20, 2007, a representative of the MassDEP detected a strong odor in the area of a standing pool of black leachate in the wetland to the east of the landfill. The Jerome Meter recorded 35 parts per million hydrogen sulfide (H_2S) in the air within approximately 1 foot of the surface of the leachate and 63 parts per billion H_2S within 5 feet of the surface of the leachate. Again, on June 26, 2007, a representative of MassDEP observed a strong odor and a standing pool of black leachate in the wetland to the east of the landfill and detected odors and measured concentrations of H_2S in the ambient air of 33 parts per million at 1 foot above the leachate surface and of 10 parts per billion at 5 feet from the surface of the leachate. On June 28, 2007 a representative of the MassDEP again observed a strong odor and black odiferous leachate in the wetland to the east of the landfill and measured concentrations of H_2S in the ambient air of 19 parts per million at 1 foot above the leachate surface and of 200 parts per billion at 5 feet from the surface of the leachate. In addition, representatives of MassDEP observed odiferous gray and/or black leachate at the following locations and measured the following concentrations of H_2S:

Crow Lane Landfill
H2S Concentrations
Leachate Breakouts

(Units = parts per billion)

Location	June 20, 2007		June 26, 2007		June 28, 2007	
	1 Foot	5 Feet	1 Foot	5 Feet	1 Foot	5 Feet
Wetland SW corner Behind Tank 4	5 ppb	4 ppb	25 ppb	6 ppb	19 ppb	1 ppb
35 feet north of Tank 4	25 ppb	5 ppb	30 ppb	6 ppb	18 ppb	1 ppb
Corner Haul Road West Tank 1	190 ppb	1 ppb	69 ppb	8 ppb	180 ppb	1 ppb

New Ventures continues to fail to collect and manage odiferous leachate from the wetland to the east of the landfill and to adequately address breakouts of odiferous leachate in other areas of the site, in violation of the Order.

For all of the above stated reasons, New Ventures is not in compliance with the Order. The MassDEP notes that on June 29, 2007, the Board of Health of the City of Newburyport issued a cease and desist order to New Ventures that in part directed New Ventures to cease the receipt and placement of Construction and Demolition Fines and Residuals (C&D Fines and Residuals) at the Landfill. In accordance with paragraph 9 of the Order, New Ventures shall not accept or place as grading or shaping material at the landfill any Construction and Demolition Fines and Residuals until MassDEP determines, in writing, that New Ventures has returned to full compliance with all terms, conditions, and requirements of the Order.

If you have any questions please contact me at (978) 694-3299.

Sincerely,

This final document copy is being provided to you electronically by the Massachusetts Department of Environmental Protection.
A signed copy of this document
is on file at the DEP office listed on the letterhead.

_____
John A. Carrigan, Chief
Solid Waste Management Section

Certified Mail Number: 7007 0710 0002 6063 1817

JAC/jac

Exhibit

Cc: John Morris
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Exhibit 1

MassDEP

Notice of Deficiency

Geotechnical Evaluation

March 7, 2007

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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CERTIFIED MAIL

March 7, 2007

William Thibeault
New Venture Associates, LLC
85-87 Boston St.
Everett, MA 02149

Re: NEWBURYPORT - Solid Wastes
Crow Lane Landfill
Geotechnical Evaluation Perimeter Berm Design
Paragraph 1(p) - Notice of Deficiency
FMF No. 39545

Dear Mr. Thibeault:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section (MassDEP) has reviewed the geotechnical evaluation of the perimeter berm design for the Crow Lane Landfill, Newburyport, Massachusetts. SITEC Environmental, Inc. ("SITEC") of Marshfield, Massachusetts submitted the geotechnical evaluation and associated design plans to MassDEP on behalf of New Ventures Associates, LLC of Everett, Massachusetts ("New Ventures") pursuant to paragraph 1(p) of the Preliminary Injunction entered on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures, LLC,* Suffolk Superior Court, Civil Action No. 06-0790C, as amended by order of the Court on November 1, 2006 and February 22, 2007 (the "Order"). Geocomp Corporation ("Geocomp") of Boxborough, Massachusetts performed the geotechnical analysis of the berm design.

MassDEP contracted with Shaw Environmental, Inc. of Salem, New Hampshire ("Shaw") for review of the geotechnical evaluation including the proposed perimeter berm

design. Shaw provided MassDEP with comments on the geotechnical evaluation and, as a result, on January 30, 2007 MassDEP requested additional detail from SITEC on the geotechnical

analysis. In response, on February 14, 2007, SITEC provided the MassDEP with a report prepared by Geocomp titled: *Summary of Results: Slope Stability analysis of Reinforced Berm Design for Crow Lane Landfill*, which has also been reviewed by MassDEP and Shaw.

In addition, on February 2, 2007, Mr. John Morris, Director of the City of Newburyport's Department of Public Health requested by email that the MassDEP provide the City of Newburyport with the opportunity to comment, by February 23, 2007, on the geotechnical evaluation and the amended Corrective Action Design. On February 22, 2007, Mr. Morris submitted to MassDEP by email comments on the geotechnical evaluation and berm design prepared by Metcalf and Eddy of Wakefield, Massachusetts ("M&E") on behalf of the City of Newburyport. The comments provided by M&E have been considered in MassDEP's review of the geotechnical evaluation and berm design.

The MassDEP review found that the geotechnical evaluation is incomplete to the extent that MassDEP is not assured that the landfill perimeter berm will remain stable. The perimeter berm includes the existing lower embankment berm and the proposed Reinforced Earth Wall that is to be constructed on top of it. Unstable conditions of concern include possible erosion of the surface materials, localized slumps, or failure of the perimeter berm. The perimeter berm is critically important to the containment of waste materials and the prevention of pollutant release to the environment.

As described below, MassDEP has determined that additional information is required in order to complete the geotechnical review of the design. The following information must be provided to MassDEP to demonstrate that this structure will remain stable over time.

1. Berm Foundation:

    a. Additional information must be supplied demonstrating the existing foundation soil properties are suitable to support the berm and achieve the parameters used in design of the berm and computation of its stability. This information should be in the form of test pit or boring logs, and laboratory test data from a sufficient number of samples identified on the logs along the entire length of the berm.

    b. Additional information must be supplied demonstrating all unsuitable materials have been removed from under the existing berm. This information may be in the form of detailed construction notes taken during construction, photographic documentation, or, in the absence of such conclusive material, new information obtained by boring though the berm and subsurface soils along the entire length of the berm.

2. Berm Construction:

    a. Additional information must be supplied demonstrating the existing berm was constructed with materials of a minimum strength used in the design stability analysis. Materials from various sources have been used for berm construction. An insufficient number of samples have been tested to assure that all berm materials meet the minimum shear strength identified by the stability calculations. If this documentation is not currently available, then it may be obtained from borings through the berm with continuous sampling and laboratory testing of representative samples.

    b. Additional information must be supplied demonstrating the existing berm was constructed as a controlled fill. This would include construction field notes, photos showing lift thickness (typically 9 to 12 inches) and documentation that compaction took place with an adequate number of passes of a vibrator roller compactor, and in-situ moisture density test results demonstrating sufficient material compaction was achieved. Alternatively, adequate berm strength may be demonstrated by borings through the berm with continuous sampling and measurement of blow counts. A geotechnical engineer must interpret the data.

    c. Additional information must be supplied demonstrating the berm surface material achieves a factor of safety (FS) suitable for the design. The stability analysis provided assumed a berm material shear strength of 38 degrees. This provides a factor of safety of 1.17 against surficial sloughing without any environmental forces, such as runoff, working on the material. A factor of safety of less than 1.5 is not suitable when considering these factors. Additional information must be supplied demonstrating how the final surface slope will be stabilized. Materials that will ensure the FS suitable for this design must be identified and plans must be provided that demonstrate that the placement of the materials will protect the underlying more erosive material.

    d. The 1:1 (H:V) rip-rap sloped berm along the west and north berm must be shown to be stable from surface failure, localize slump failure and global stability failure. Design analysis, details, and specifications must be provided for constructing the proposed stone buttress at the base of the westerly and northerly slopes.

3. Reinforced Earth Wall Design – Additional information must be supplied demonstrating the wall can be constructed on top of the existing berm in a stable manner. This information shall include:

a. A revised construction specification Part 2.04. The specified gradation for the reinforced backfill (geogrid in-fill) is not consistent with materials specifications required for achieving an internal friction angle of 40 degrees.

b. Specifications for all materials to be used, including Clean Structural Fill.

c. Revisions as necessary to achieve minimum acceptable factors of safety for both global and bearing capacity failures of the berm. A factor of safety lower than 1.5 is not suitable given the lack of material data for the underlying soils and/or the construction of the existing portions of the berm. Such revisions may include revision of the design to increase stability and/or revision of the stability analysis to reduce the level of uncertainty of the analysis/design.

d. A revised stability analysis to check for circular failure through the berm subgrade for the worst-case condition, as well as additional stability analysis for the worse case combination of both wall and berm heights.

e. Additional slope stability analysis must be performed to include the potential slip surface along the Geomembrane located behind and under the Reinforced Earth Wall. This condition is currently in-place and should be represented by surveyed as-built conditions in the most critical locations, if different from the existing cross section locations and the additional analysis requested under item d, above.

f. Additional details of the geogrid wall facing and the secondary geogrid reinforcements (of shorter length) used in between the primary geogrids for wrapping around the wall facing.

g. Revised design drawings to match the conclusions of the geogrid reinforcing determined by the stability analysis.

h. Revision of the test designation for tensile strength of geogrid to be ASTM D6637 and the test method for junction strength of the geogrid to be GRI GG-2.

4. A Construction Quality Assurance (CQA) Plan that includes, at a minimum:

a. A quality control program that will be used for assuring the berm, including the wall, will be constructed in accordance with the construction plans and specifications.

b. The preparation and submission of a post-construction Certification Report that provides detailed documentation that the requirements of the design, specifications and CQA Plan have been met. The report will be prepared and certified by a Massachusetts Professional Engineer in accordance with 310 CMR

19.011. The Certification report must include, but not limited to, information as described in Item 2.b above.

Pursuant to section 1 (p) of the Order, New Ventures shall within seven (7) days of receipt of this notice submit such materials as necessary to address the deficiencies and concerns identified by MassDEP in this notice. Failure by you to take adequate action in response to this letter could result in serious legal consequences. MassDEP reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including, without limitation, those in the Order, M.G.L. Chapter 111, § 150A and the implementing regulations thereunder, 310 CMR 19.000, and M.G.L. Chapter 21E and the implementing regulations thereunder, 310 CMR 40.0000.

If you have any questions regarding this matter please contact David Adams at 978-694-3295.

Sincerely,

Sincerely,

DCA
David C. Adams
Environmental Engineer
Solid Waste Management

JAC
John A. Carrigan
Section Chief
Solid Waste Management

JAC/DCA/dca

Cc:

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